

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION**

Call to Order: By **CHAIRMAN MACK COLE**, on February 2, 1999 at 10 A.M., in Room 331 Capitol.

ROLL CALL

Members Present:

Sen. Mack Cole, Chairman (R)
Sen. Don Hargrove, Vice Chairman (R)
Sen. Jon Tester (D)
Sen. Jack Wells (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Keri Burkhardt, Committee Secretary
David Niss, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 295, 1/26/1999; SB 102,
1/4/1999
Executive Action: SB 295

HEARING ON SB 295

Sponsor: SEN. STEVE DOHERTY, SD 24, GREAT FALLS

Proponents: Tim Shanks, Montana Police Protective Association
Mike O'Connor, Executive Director, Public
Employees Retirement System
Robert L. Furu, Retiree, Bozeman Police Department
Tom Bilodeau, Research Director, Montana
Education Association, Montana Federation of
Teachers

Mark Tymrak, Montana Association of Chiefs of Police
Bob Anderson, Montana Sheriffs and Peace Officers Association
Leo Berry, Association of Retired Public Employees
Jim Oberhofer, Retiree
Jeff Bryson, Retiree
Bill Steel, Retiree, Retired Police Officers Association
Doug Neil, Montana State Firemen's Association
Frank Cole, Retired Police Officers Association, Missoula

Opponents: None.

{Tape : 1; Side : A; Approx. Time Counter :6-18}

Opening Statement by Sponsor:

SEN. STEVE DOHERTY, SD 24, Great Falls, explained that this bill will remove a provision that stops a benefit if a recipient becomes an active member of another retirement system. He added that there is no fiscal impact. It's a matter of equity and fairness to the members, if they should choose to work again.

Proponents' Testimony:

Tim Shanks, Montana Police Protective Association, read a letter explaining the bill and why he supports it **EXHIBIT(sts26a01)**.

Mike O'Connor, Executive Director, Public Employees Retirement System, explained that 53 people are effected by this bill. When the GABA (Guaranteed Annual Benefit Adjustment) went into place, they assumed that when a person was eligible for GABA they would receive it and not be penalized for working in another position. The board supports this bill.

Robert L. Furu, Retiree, Bozeman Police Department, explained that after he retired from the police department he went on to work for probation and parole. He thought he was receiving GABA but found out that because he was a state employee, he was not entitled to GABA. He urged the committee to pass this bill.

Tom Bilodeau, Research Director, Montana Education Association, Montana Federation of Teachers, supports the bill. First, there is no fiscal impact. Secondly, **HB 72**, provides a GABA for teachers which does not exclude teachers, if they join another system. What **SB 295** is proposing, is already being addressed in

HB 72 for the teachers. **Senate Bill 295** brings the systems into consistent alignment. All retirees, regardless of what system they retire out of or move into, would be treated the same. This proposal will provide a more reasonable and administratively efficient method for the public employee retirement system to administer GABA benefits.

Mark Tymrak, Chief of Bozeman Police Department, Montana Association of Chiefs of Police, asked for the committee's support.

Bob Anderson, Montana Sheriffs and Peace Officer Association, encouraged the committee to support **SB 295**.

Leo Berry, Association of Montana Retired Public Employees, explained that his association was active in the passage of the GABA bill last session and is in support of **SB 295**.

Jim Oberhofer, Retiree, urged the support of the committee.

Jeff Bryson, Retiree, explained that the Public Employee Retirement System sent out a letter, along with an election ballot, to each of its members. They had to sign for a one time life election as to what retirement they wanted to go under; GABA or continuing under their own. There was no mention in the letter that Title 19 retirements would be effected. He was effected because he retired and went to work for the state. If he would have known GABA was exempt, he probably would have made a different choice. He said that the 52 other people effected probably did not know they would be excluded through GABA at the time they made the decision to join GABA.

{Tape : 1; Side : A; Approx. Time Counter : 18-24}

Bill Steel, Retiree, Retired Police Officers Association, supports this bill.

Doug Neil, Montana State Firemen's Association, urged the committee's support.

Frank Cole, Retired Police Officers Association, Missoula, said that this bill saves the state money because the officers that retire use their experience in other state positions. They are already trained and if one of them were to quit because this bill did not pass, they would have to train another individual to take his place.

Questions from Committee Members and Responses:

SEN. COLE asked **Mike O'Connor** to explain why there was no fiscal impact. **Mr. O'Connor** said that when GABA was passed, the cost addressed all people who were eligible.

Closing by Sponsor:

SEN. DOHERTY urged the committee to pass **SB 295**.

{Tape : 1; Side : A; Approx. Time Counter : 24 - 42}

HEARING ON SB 102

Sponsor: **SEN. EVE FRANKLIN, SD 21, GREAT FALLS**

Proponents: **Mark O'Keefe, State Auditor, Insurance Commissioner**
Verna Bertlesen, Montana Senior Citizens Association
Andrea Merrill, Executive Director, Mental Health Association of Montana.
Gloria Hermanson, Montana Psychological Association
Todd Thun, Montana Nurses Association

Opponents: **Greg Vanhorssen, State Farm Insurance Company**
Jon Metropoulos, Attorney, Farmers Insurance Group
Mark Baker, Attorney, National Association of Independent Insurers, American Council of Life Insurance
Page Dringman, Health Insurance Association of America

Opening Statement by Sponsor:

SEN. EVE FRANKLIN, SD 21, Great Falls introduced herself and handed out some testimonies that explain the rising problem in the divulging of personal health care information to various entities **EXHIBIT(sts26a02)**, **EXHIBIT(sts26a03)**, **EXHIBIT(sts26a04)**, and **EXHIBIT(sts26a05)**. This bill states that health care information cannot be divulged unless it can be demonstrated that the need to know exceeds the right of individual privacy. She proposed an amendment to the initiative **EXHIBIT(sts26a06)** because the original language was too broad and included, "any person, firm corporation, or institution," and her amendment would insert, "licensed to transact insurance". She explained that insurance companies are the largest purveyors and repositories of private health care information therefore, we must highlight that reality and ask for some special attention to the way that

information is handled. There is also a statutory piece of legislation being proposed, which is her preference, because the language can be crafted to meet individual needs. If that bill does not pass, this constitutional initiative would still provide protection for people. As we evolve, the reality of how many people have access to private personal information has become more and more real to the public. Literature has said that 77 people will see each persons medical records in a legitimate course of transacting business. Most companies have very specific disclosure limitations for providers and insurers. We need limitations set in policy.

Proponents' Testimony:

Mark O'Keefe, State Auditor, Insurance Securities Commissioner, explained that **SB 102** is here at their request because he is convinced that Montanans want stronger privacy protection for their health care information. He added that **SB 103** would give Montanans the protection they need without a constitutional amendment. The only opponents to **SB 103** were insurance companies. Insurance companies don't want restrictions placed on them as to what they can do with personal health care information. **Senate Bill 102** contains ballot language that could possibly appear on the year 2000 ballot. He said that if this bill dies, he will petition to have this put on the ballot in the year 2000. He made references to the packet **SEN. FRANKLIN** previously handed out during her opening. This packet included articles from the Great Falls Tribune and The Washington Post, about insurance and manage care companies treating private medical information as a marketing commodity. Also, included in the packet are various letters with accounts of misuse of private medical information in Montana. He said that usually problems that present themselves in Texas, Illinois, New York, Florida, and California will reach Montana in 5 years. This particular problem is happening in Montana at the same time its happening across the country. He made reference to a letter, from a doctor that prescribed medication to a patient. The patient and doctor received targeted mailings from a pharmaceutical company suggesting that they substitute an over-the-counter medication for the medication the doctor had prescribed. It is legal, under Montana Law, to disclose a patient's private prescription records to a direct mail marketer. He made reference to another letter about the disclosure of a woman and her son's medical information. Through a fax to the woman's place of work, while she was out of town, the insurance company announced, in detail, that it was declining coverage for her medical condition and that of her son. Montana law does not cover such careless disclosures of private medical facts. It is his job to protect the private health care information when the insurance industry gets them.

Private medical records need to be collected and analyzed but people have little protection against disclosure to various entities. If an insurance company can manage a true revolution in information technology they can also live with common sense privacy protections. If an insurance company says that they cannot afford to guarantee the privacy of health care information, he urged the committee to question whether they are managing that information or selling it as a commodity.

Verna Bertlesen, Montana Senior Citizen's Association, strongly supports SB 103 and feels that it is a better bill than **SB 102** because it will meet the needs of protection without going into a constitutional initiative. However, if the protection of medical records requires a constitutional initiative then he will support it.

{Tape : 1; Side : A; Approx. Time Counter : 42; Comments : Tape Over}

Andrea Merrill, Executive Director, Mental Health Association of Montana, supports **SB 102** just as they supported **SB 103**. It is very important to protect against unwarranted disclosures of private health care information. This is particularly important with mental health and emotional conditions because of the tremendous stigma against them. She shared a story about a friend. Her friend needed to buy an insurance plan and filled out a form disclosing her personal health care information. A salesman from the company gave a message to her secretary asking for her dosage of Prozac. The woman was upset that her secretary was given her information. She had 3 days to buy insurance so her husband called to find out why it was taking so long to approve. The salesman disclosed that she had too many visits to a mental health professional and they worried about covering her. Again, the salesman disclosed her personal information to someone (her husband) without her consent. The Mental Health Association supports a constitutional amendment if something carefully crafted and correct is not done about this situation

EXHIBIT (sts26a07).

Gloria Hermanson, Montana Psychological Association, strongly supports this bill just as the association is strongly in support of **SB 103**.

Todd Thun, Montana Nurses Association, said that the association believes that insurance companies should be held to the same standard as health care providers.

Opponents' Testimony:

Greg Vanhorssen, State Farm Insurance Company, explained that this is a sensitive issue that should be considered very carefully. State Farm Insurance is primarily an auto insurer, but they offer some life and a small amount of health coverage. He opposes modifying the Constitution in this fashion. The disclosure of health care information is a serious offense within this company and leads to serious consequences. This company does not disclose health care information without legitimate purposes. They oppose modifying the Constitution because it may create some difficulties. The amendment makes the constitutional change applicable only to insurance companies and no one else. He explained that an insurance company legitimately passes on medical information to quantify risks, to consultants to make sure the treatment is effective and/or necessary, and for cross-coverage purposes. The constitutional amendment may prohibit the transfer of health insurance information under those types of circumstances. Under this change, the issue of, "the merits of disclosure clearly exceed the demand of individual privacy," is too broad. This amendment targets insurance companies and, he added, in order to protect this information all entities who have access to this information; hospitals, pharmacies, doctors, nurses, and pharmaceutical companies, should be included. The legislature should create the protections needed via the laws but not through the Montana State Constitution.

Jon Metropoulos, Attorney, Farmers Insurance Group, said that he opposes this bill. Farmers supports the concept of privacy of medical records. Insurance companies want medical records to be private. In general, protections, narrowing the amount of disclosure under state law, are acceptable and desired by insurance companies. That was accomplished through **SB 103**. They do not want a ban on the use and disclosure of medical record information, within insurance companies and their affiliates, for specific purposes. He said the major argument is how this information can be used for marketing purposes. The language Farmers agreed to said that no medical record information could be used for marketing purposes. The exhibits handed out, site a number of problems that have arisen with the disclosure of medical record information, but site only one reference of an insurance company. These articles mention other entities which disclose information. These entities are not addressed in **Senate Bill 102**. The amendment offered, appears to make insurance companies the "villain of the day." The figure that was cited of the 77 people who see personal medical records are within a hospital. In conclusion, he urged the committee to look carefully at what **SB 103** is intended to do and what this bill is intended to do. He said that he thinks it is to protect medical record information and that **SB 103** does that. Also, insurance companies are not the only ones that have access to medical

records and are not the entity that most commonly improperly distributes this information.

{Tape : 1; Side : B; Approx. Time Counter : 59-67}

Mark Baker, Attorney, National Association of Independent Insurers, American Council of Life Insurance, said that modifying the State Constitution could cause unintended consequences such as further litigation. The language offered is broad reaching and left open to interpretation. He's not sure how "the merits of disclosure" and "exceeding the demand of individual privacy" would be defined. He said that it is possible that we would be subjecting legitimate disclosure of information to litigation every time the attempt is made to transfer that information. Additionally, defining what is "individually identifiable health care information" is also left open to interpretation. Therefore, additional litigation would result in that situation as well. The National Association of Independent Insurers and the American Council of Life Insurance doesn't want the unintended disclosure of personal health care information for illegitimate purposes. They support **SB 103** but think **SB 102** is the wrong direction to take.

Page Dringman, Attorney, Health Insurance Association of America, said that she opposes **SB 102** for many of the reasons stated. The bill as amended does not allow the release of medical record information for legitimate purposes. **Senate Bill 103** allows the release of medical records only for insurance purposes and requires a written disclosure for other functions. Also, personal medical information cannot be used in marketing. Therefore, **SB 103** addresses many concerns that people have about disclosing private health care information and she is in support of **SB 103**. The only entity addressed in **SB 102** is the insurance companies. This will not prevent other entities from disclosing information. She said that the constitution is supposed to be an over arching document with broad guidelines, not to address every particular situation. The right of privacy applies to a lot of things besides health care information. She explained the legal concerns with amending the constitution which were also the concerns of the previous witnesses. She encouraged the committee to address the problems, in statute and not by amending the constitution. Also, to apply those standards to all entities, not just insurance companies.

{Tape : 1; Side : B; Approx. Time Counter : 67 - 80}

Questions from Committee Members and Responses:

SEN. HARGROVE asked **SEN. FRANKLIN** to explain **SB 103**. **SEN. FRANKLIN** explained that **SB 103** is a statutory amendment put forth to attempt to provide better protection against disclosure of private health care information. She explained that the insurance companies are the port hole for information through which all of this information gets processed. Many other entities receive their information primarily from the insurance companies. **Senate Bill 103** puts some limitations on secondary disclosure. The secondary disclosure, under certain circumstances, would require a written authorization. **Senate Bill 102** is a safeguard if **SB 103** does not pass. **SEN. HARGROVE** asked if **SB 103** is in a subcommittee. She answered that it is in a subcommittee and will be reported out to the Public Health, Welfare, Safety committee. **SEN. FRANKLIN** said that she was on the subcommittee.

SEN. HARGROVE asked if **SB 103** will satisfy the privacy requirements of the insurance commissioner's office, as it comes out of subcommittee. **Mr. O'Keefe** answered that he wants more but he is willing to compromise with what has come out of the subcommittee. It is less than what is in **SB 102**. He said that they would be satisfied if **SB 103** passes. He wants some authority to be able to deal with a problem when it arises. **SEN. HARGROVE** asked why **SB 102** would not apply to the other entities when it says, "any person, firm, corporation, or institution". **Mr. O'Keefe** said that it would have applied to those other entities without the amendment, "licensed to transact insurance," proposed by **SEN. FRANKLIN**. He added that the medical professionals already have a uniform health care code that deals with privacy of medical records.

SEN. WILSON asked why this bill was referred to the State Administration committee instead of Public Health or Judiciary. **SEN. FRANKLIN** explained that it was referred to State Administration because this committee deals with the constitutional initiative issues.

SEN. WELLS asked **SEN. FRANKLIN** to give an example of something that merits disclosure exceeding the demand of individual privacy. **SEN. FRANKLIN** answered that claims administration and anything having to do with insurance functions would be legitimate reasons to distribute information.

SEN. TESTER asked **SEN. FRANKLIN** if this bill were adopted, would giving information to a spouse be in violation. He wanted to know how far reaching the bill was. **SEN. FRANKLIN** said that insurers should have the same responsibilities as a private practitioner has. Usually, health care providers have a document

that the patient signs, letting them disclose health care information to family members.

{Tape : 2; Side : A; Approx. Time Counter : 80; Comments : Change Tape}

SEN. TESTER asked **Mr. O'Keefe** what kind of penalties could be enforced if someone violated this law. **Mr. O'Keefe** answered that under **SB 103**, the anticipated penalty is \$25,000 dollars per occurrence. He referred the question to **Russell Hill**, his Chief Legal Counsel. **Mr. Hill** explained that there are no penalties and that its just a constitutional provision; a kind of symbolic statement. **SEN. TESTER** asked what would stop these occurrences if there is no legal penalty. **Mr. O'Keefe** said that if an insurance commissioner receives a complaint he would have legal staff investigation. Then a Cease and Assist Order would be issued against the company. Followed by, an administrative hearing and then litigation in criminal court. Typically, a company would be willing to make a mends or they would fight it in court. **SEN. TESTER** asked how many other states have this type of language. **Mr. O'Keefe** said that in this legislative session he would anticipate 15-20 states have protections in place and the other 30 states are looking at this type of information. **SEN. TESTER** asked **Mr. O'Keefe** what he would like to have happen with this bill, as far as timing. **Mr. O'Keef** said that his preference would be that the committee wait on it and if the committee believes that it is the type of bill the Montana voters would support, they may want to pass it out.

{Tape : 2; Side : A; Approx. Time Counter : 87 - 94}

SEN. COLE asked **SEN. FRANKLIN** why the amendment wasn't on the original. **SEN. FRANKLIN** explained that it was drawn too broadly originally and it became clear that they needed to narrow it down. **SEN. COLE** asked why it covered just insurance companies and not all entities. **SEN. FRANKLIN** answered that most of the providers are already covered under the Uniform Health Information Act. They targeted the insurers because they were the largest entity that information is going to be tasked through.

Closing by Sponsor:

SEN. FRANKLIN explained that they worked very hard on **SB 103** and wanted second option to deal, in case **SB 103** is not passed. They are trying to put parameters on the explosion of information sharing. She added that the structure through which a lot of private information is stored and transferred, needs to be looked

at. The first line of obligation to the public is to protect what, subjectively, most individuals would feel to be their privacy.

{Tape : 2; Side : A; Approx. Time Counter : 94-121}

EXECUTIVE ACTION ON SB 295

Motion/Vote: SEN. TESTER moved that SB 295 DO PASS. Motion carried 5-0.

A brief discussion was held as to the progress of the working group on SB 228.

ADJOURNMENT

Adjournment: 11: A.M.

SEN. MACK COLE, Chairman

KERI BURKHARDT, Secretary

MC/KB

EXHIBIT (sts26aad)